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Planning Commission Study Session

TO: PLANNING COMMISSION

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MEETING DATE: FEBRUARY 5, 2020

SUBJECT: Z19-11, LDC TEXT AMEND INDUSTRIAL HEMP: DISCUSSION OF AMENDMENT TO THE TOWN OF GILBERT LAND DEVELOPMENT CODE, CHAPTER I ZONING REGULATIONS, DIVISION 2 LAND USE DESIGNATIONS, ARTICLE 2.9 USE REGULATIONS, TABLE 2.902 USE REGULATIONS; DIVISION 4 GENERAL REGULATIONS, ARTICLE 4.5 SUPPLEMENTAL USE REGULATIONS; DIVISION 6 USE DEFINITIONS, ARTICLE 6.1 USE DEFINITIONS; AND THE GLOSSARY OF GENERAL TERMS, RELATED TO INDUSTRIAL HEMP.

STRATEGIC INITIATIVE: Prosperous Community

Individuals and families prosper in clean, safe communities with great schools, high-quality healthcare options and strong social connections. The proposed amendment responds to changes to state law that authorizes the commercial cultivation of industrial hemp.

RECOMMENDED MOTION

No motion requested.

BACKGROUND/DISCUSSION

History

Date	Description
<i>June 5, 2019</i>	The Planning Commission conducted a citizen review and initiated Z19-11, an amendment to the Land Development Code.

Overview

On December 20, 2018, the federal Agricultural Improvement Act of 2018 (PL 115-334) was adopted, removing industrial hemp (“hemp”) from the definition of marijuana and allowing for the commercialization of hemp. It also expanded the definition of hemp to include seeds, all derivatives, extracts, cannabinoids (including Cannabidiol or CBD), isomers, acids, salts, and salts of isomers. Several other changes were made that will open up the commercialization of hemp. This federal law did not preempt or limit states from regulating the growing, harvesting, transportation, researching, marketing, and processing of hemp in a more stringent manner (7 U.S.C. § 1639p).

On May 14, 2018, Senate Bill 1098 was signed by Governor Ducey, allowing for commercial growth and/or processing of industrial hemp for commercial or research purposes only and directing the Arizona Department of Agriculture (AZDA) to adopt rules to oversee the licensing, production and management of industrial hemp in Arizona. There are six types of state licenses that can be applied for - Grower, Harvester, Transporter, Processor, Nursery, and Certified Laboratory.

It is important to note that AZDA’s oversight only extends from the commercial growth and cultivation of industrial hemp *up to the point of processing*. No state license is required for the sale, manufacture, or marketing of any post-processed hemp materials. For licensed processors, AZDA will focus on ensuring the licensees receive raw material that is below 0.3% THC (tetrahydrocannabinol, which is the main active ingredient of cannabis).

All other applicable laws and regulations related to manufacturing (including regulations of the Food and Drug Administration (FDA), food handling laws, and local zoning laws and codes) are out of AZDA’s scope of regulatory oversight. Consequently, local governments retain their authority to enact and enforce reasonable regulations regarding commercial industrial hemp activities consistent with federal and state laws and regulations.

It is the Town of Gilbert’s goal to remain one of the most desirable communities to live in Arizona and adopt regulations that take into account economic development and agricultural vitality, while ensuring the health, safety and welfare of the community. In light of the new laws, staff is requesting Planning Commission feedback on the type of changes to the Land Development Code (LDC) that may be appropriate to address industrial hemp activities.

The proposed code amendment is based on the model ordinance of the League of Arizona Cities and Towns. Staff also queried other municipalities for comparable regulations. Chandler, Apache Junction, Peoria, Queen Creek, Youngtown, and Maricopa County have responded that they do

not have any existing or proposed regulations in place for industrial hemp activities. On December 9, 2019, Coolidge adopted an ordinance allowing hemp processing as a permitted use in General Industrial zones and requiring a Conditional Use Permit as a secondary use in Garden Industrial zones and as a secondary use to a single family detached dwelling in Agricultural zones.

1. Add New Use

The proposed code amendment would add the *Industrial Hemp* use to LDC Table 2.902 and would allow the use by right in the Light Industrial (LI) and General Industrial (GI) zoning districts.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.9 Use Regulations, Table 2.902 Use Regulations (additions in ALL CAPS; deletions in ~~strikeout~~):

Use Category		
	LI	GI
Agricultural		
* * *		
INDUSTRIAL HEMP	P	P
Medical Marijuana Facilities:		
<i>Medical Marijuana Designated Caregiver Cultivation Location</i>	P	
<i>Medical Marijuana Offsite Cultivation Site</i>	U	U
* * *		

2. Hemp Locations and Operations

A new section is proposed under LDC Article 4.5 to address where *Industrial Hemp* uses may be located, developed, and operated. The new use must comply with state licensing, meet separation requirements, and allow fire and code compliance inspections.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations (additions in ALL CAPS; deletions in ~~strikeout~~):

Article 4.5 Supplemental Use Regulations

Sections

4.501	Applicability
4.502	Home Occupations
4.503	Residential Day Care
4.504	Group Homes for the Handicapped
4.505	Place of Worship
4.506	Vacation or Short-Term Rentals
4.507	Farm Stands
4.508	Animal Services

4.509	Cemeteries
4.5010	Non-Traditional Business Uses
4.5011	Sexually-Oriented Businesses
4.5012	Temporary Uses
4.5013	Temporary Structures
4.5014	Medical Marijuana Dispensaries and Offsite Cultivation Sites
4.5015	Recovery Residence
4.5016	Miscellaneous Provisions
4.5016	INDUSTRIAL HEMP
4.5017	MISCELLANEOUS PROVISIONS

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4.5016 INDUSTRIAL HEMP

Industrial Hemp uses shall be located, developed, and operated in compliance with the following standards:

- A. ***Purpose and Intent.*** This section is adopted to promote the health, safety, and welfare of the Gilbert community by enacting reasonable regulations for the commercial cultivation of industrial hemp by requiring compliance with zoning laws.
- B. ***Applicability.*** The minimum requirements of this section shall apply to all Industrial Hemp uses located in any zoning district.
- C. ***Compliance with State Licensing Requirements.***
 - 1. It shall be unlawful for any person to grow, harvest, transport or process industrial hemp, or to use eligible seed and propagative materials to produce an industrial hemp crop or plant, in the Town of Gilbert without having first obtained a valid license from the State pursuant to A.R.S. § 3-311 *et seq.* and Title 3, Chapter 4, Article 10 of the Arizona Administrative Code.
 - 2. It shall be unlawful for a person to grow, harvest, process, or store industrial hemp in any residential dwelling unit pursuant to Title 3, Chapter 4, Article 10 of the Arizona Administrative Code.
 - 3. The applicant shall notify the Town of Gilbert within 48 hours if the State imposes a corrective action plan on the applicant or suspends or revokes the applicant's license.
- D. ***Industrial Hemp Site Regulations.***
 - 1. Industrial Hemp is subject to the following conditions and limitations:
 - a. Industrial Hemp shall only be permitted in the Light Industrial (LI) and General Industrial (GI) zoning districts.

- b. Industrial Hemp Sites must meet the minimum separation requirements set forth in Table 4.5016: Industrial Hemp Separation Requirements. Measurements shall be made in a straight line in any direction, from the parcel line of the proposed Industrial Hemp Sites to the closest parcel lot line of the uses set forth in Table 4.5016. A minimum separation requirement does not apply to any Use or Use Classification described in Table 4.5016 that is separated from an Industrial Hemp Site by a freeway.

Table 4.5016: Industrial Hemp Separation Requirements

<i>Use or Use Classification</i>	<i>Separation Requirement (feet)</i>
Cemetery	1,000
Day Care Center, public or private	1,000
Public or Private Park	1,000
Place of Worship	1,000
Schools, Public or Private	1,000
Residential Zoning District Boundary	500

- c. Except as otherwise allowed under state law, disposal of industrial hemp waste shall not be allowed on public property, in any Town of Gilbert refuse or recycling container, unless authorized by the Town of Gilbert. In addition, no person shall discharge or cause to be discharged to a sewer system or other public system any waste that may have an adverse or harmful effect on the system, Gilbert personnel or equipment, effluent quality, public or private property; or which may otherwise endanger the public, the environment or create a public nuisance, or which exceeds limitations as set by the state; or cause the system to violate state or federal regulations or permits; or adversely affect water reclamation, water reuse or sludge disposal or air quality.
- d. Industrial Hemp activities shall not emit smells and odors beyond the Industrial Hemp Site or beyond ten (10) feet of the exterior of an Industrial Hemp Site building, whichever distance is less, which are not generally found in a residential environment, except during periods while a door is open for the purpose of transporting industrial hemp not to exceed fifteen (15) minutes per period.
- e. Industrial Hemp Sites shall allow inspections of the exterior premises by Gilbert Code Compliance or a designee at any time during regular business hours.
- f. Industrial Hemp Sites shall allow fire inspections pursuant to the Town of Gilbert Fire Code.
- g. No vehicle used to transport industrial hemp to or from an industrial hemp site shall park in a residential zone or be left unattended on any public street, sidewalk, alley or other public right-of-way in the Town of Gilbert. Non-

compliant vehicles shall be subject to Gilbert Municipal Code, Chapter 62, Traffic and Vehicles.

4.5016 Miscellaneous Provisions

4.5017 Miscellaneous Provisions

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3. Definitions

In addition to the *Industrial Hemp* use definition, changes are proposed to clarify that commercial and non-commercial crop raising does not include hemp.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Division 6 Use Definitions, Article 6 Use Definitions (additions in ALL CAPS; deletions in ~~strikeout~~):

Article 6.1 Use Definitions

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Crop and Animal Raising, Commercial. The growing of tree, vine, field, forage, and other plant crops, intended to provide food or fiber, and the keeping, grazing, or feeding of fowl or animals for animal products, animal increase, and value increase for profit. THIS CLASSIFICATION EXCLUDES INDUSTRIAL HEMP.

Crop Raising, Non-Commercial. The growing of tree, vine, field, forage, and other plant crops, intended to provide for food or fiber not for profit. THIS CLASSIFICATION EXCLUDES INDUSTRIAL HEMP.

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INDUSTRIAL HEMP. THE GROWING, HARVESTING, TRANSPORTING, PROCESSING OR STORAGE OF INDUSTRIAL HEMP, OR THE USE OF ELIGIBLE SEED AND PROPAGATIVE MATERIALS TO PRODUCE INDUSTRIAL HEMP, AS AUTHORIZED AND LICENSED BY THE STATE OF ARIZONA.

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4. Add Related Terms

State law includes several terms related to *Industrial Hemp*. The proposed code amendment will add and cross reference those terms to make the LDC more user friendly.

Proposed Zoning Code Amendment

Chapter I Zoning Regulations, Glossary of General Terms (additions in ALL CAPS; deletions in ~~strikeout~~):

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INDUSTRIAL HEMP RELATED TERMS

GROWER. AN INDIVIDUAL, PARTNERSHIP, COMPANY, OR CORPORATION THAT PROPAGATES INDUSTRIAL HEMP UNDER TITLE 3, CHAPTER 2, ARTICLE 4.1 OF THE ARIZONA REVISED STATUTES AND TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.

HARVESTER. AN INDIVIDUAL, PARTNERSHIP, COMPANY, OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF AGRICULTURE TO HARVEST INDUSTRIAL HEMP FOR A LICENSED GROWER.

HEMP PRODUCTS. ALL PRODUCTS MADE FROM INDUSTRIAL HEMP, INCLUDING CLOTH, CORDAGE, FIBER, FUEL, GRAIN, PAINT, PAPER, CONSTRUCTION MATERIALS, PLASTICS, AND BY-PRODUCTS DERIVED FROM STERILE HEMP SEED OR HEMP SEED OIL. HEMP PRODUCTS EXCLUDE ANY PRODUCT MADE TO BE INGESTED EXCEPT FOOD MADE FROM STERILE HEMP SEED OR HEMP SEED OIL.

HEMP SEED. ANY VIABLE CANNABIS SATIVA L. SEED THAT PRODUCES AN INDUSTRIAL HEMP PLANT THAT IS SUBJECT TO TITLE 3, CHAPTER 2, ARTICLE 4.1 OF THE ARIZONA REVISED STATUTES AND TITLE 3, CHAPTER 4, ARTICLE 10 OF THE ARIZONA ADMINISTRATIVE CODE.

INDUSTRIAL HEMP. ANY VIABLE CANNABIS SATIVA L. AND ANY PART OF SUCH A PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION OF NOT MORE THAN 0.300% PERCENT ON A DRY-WEIGHT BASIS.

INDUSTRIAL HEMP SITE. THE LOCATION IN WHICH A GROWER, HARVESTER, TRANSPORTER, OR PROCESSOR POSSESSES A CROP, A HARVESTED CROP, OR HEMP SEED.

NURSERY. REAL PROPERTY OR OTHER PREMISES ON OR IN WHICH INDUSTRIAL HEMP STOCK IS PROPAGATED, GROWN, OR CULTIVATED AND INTENDED FOR SALE, GIFT, OR PROPAGATION, EITHER CULTIVATED OR COLLECTED IN THE WILD, OR FROM WHICH SOURCE INDUSTRIAL HEMP STOCK IS OFFERED FOR DISTRIBUTION OR SALE.

PROCESSOR. AN INDIVIDUAL, PARTNERSHIP, COMPANY OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF AGRICULTURE TO RECEIVE INDUSTRIAL HEMP FOR PROCESSING INTO HEMP PRODUCTS OR HEMP SEED.

TRANSPORTER. AN INDIVIDUAL, PARTNERSHIP, COMPANY OR CORPORATION THAT IS LICENSED BY THE STATE OF ARIZONA DEPARTMENT OF

AGRICULTURE TO TRANSPORT INDUSTRIAL HEMP FOR A STATE-LICENSED
GROWER TO A PROCESSOR.

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STAFF RECOMMENDATION

Staff requests Planning Commission input.

Respectfully submitted,

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Principal Planner / Zoning Administrator